

§ 4. —Judicial Authority With Respect to Rules

The role that the courts play in adjudicating questions involving the rules of either House must of necessity be a limited one, for the manner in which a House or committee of Congress chooses to run its business ordinarily raises no justifiable controversy.⁽³⁾ On the other hand, when the application or construction of a rule directly affects persons other than Members of the House, the question presented is of necessity a judicial one.⁽⁴⁾ Thus, to a limited extent, the rules of Congress and its committees are judicially cognizable. Even where a judicial controversy is presented, however, the function of the courts is generally a narrow one.

The Constitution empowers each House to determine its rules of proceedings.⁽⁵⁾ The House may not by its rules ignore constitu-

tional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations, all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just.⁽⁶⁾ In accordance with these principles, the question, as was stated in one case,⁽⁷⁾ is not what rules Congress may establish, but rather what rules the House has established and whether they have been followed.

Although rules adopted by the House or its committees have the

stringent procedure with respect to debate and amendments, a bank bill whose immediate passage had been recommended by President Roosevelt.

3. *Yellin v United States*, 374 U.S. 109 (1963); *United States v Ballin*, 144 U.S. 1 (1892).
4. *Yellin v United States*, 374 U.S. 109 (1963); *Christoffel v United States*, 338 U.S. 84 (1949).
5. See § 3, *supra*.

6. *Yellin v United States*, 374 U.S. 109 (1963); *United States v Ballin*, 144 U.S. 1 (1892).
7. *Christoffel v United States*, 338 U.S. 84 (1949). In the *Christoffel* case, the petitioner had been convicted of perjury before a House committee under a statute punishing perjury before a "competent" tribunal. The petitioner contended that the committee was not a "competent" tribunal in that a quorum was not present at the time of the incident alleged. The court reversed the conviction, citing an erroneous instruction that would have allowed the jury to determine competency on the basis of the situation existing at the time the committee convened rather than at the time of the actual incident.

force of law and are binding on those for whose use the rules were established,⁽⁸⁾ there is a point beyond which courts will not venture in their disposition of cases concerning the rules. Thus, in a controversy involving a House rule that required testimony to be received by a committee in executive session only if the committee determined that the testimony of the witness would tend to defame, degrade, or incriminate any person, the court stated that it would be an unwarranted interference with the powers conferred by the Constitution upon the legislative branch for any court to presume to dictate that determination.⁽⁹⁾ It is worth noting that the court in this case also cited a presumption in favor of the regularity of all official conduct and stated that the presumption required that it be assumed that a committee would not disregard its rules.

§ 5. —Amendment

In the exercise of its rule-making power under the Constitution,⁽¹⁰⁾ the House may amend its

rules at any time. It has been said⁽¹¹⁾ that the question of changing the rules of the House is a matter for decision by the House and not the Chair.

Generally, amendments are made by resolution, although, of course, rules may be, in effect, rescinded or modified through the use of a number of procedural devices, such as unanimous-consent requests.⁽¹²⁾ Similarly, statutes containing provisions as to procedure may have the effect of changing a rule of the House where the statute is the later reflection of the will of the House.⁽¹³⁾ In adopting the rules of the previous House, of course, the House frequently amends such rules, either by incorporating the amendments in the resolution adopting the rules, or adopting amendments after a negative vote on ordering the previous question on the resolution as first offered.⁽¹⁴⁾

The Committee on Rules has jurisdiction over the rules and joint rules, other than rules or joint rules relating to the Code of Offi-

8. *Yellin v United States*, 374 U.S. 109 (1963); *Christoffel v United States*, 338 U.S. 84 (1949); *Randolph v Willis*, 220 F Supp 355 (1963).
9. *Randolph v Willis*, 220 F Supp 355 (1963).
10. See § 3, *supra*.

11. See the proceedings at 104 CONG. REC. 12121, 85th Cong. 2d Sess., June 24, 1958 (especially remarks of Speaker Rayburn).
12. See § 5.2 (amendment by unanimous consent) and § 7 (abrogation or waiver), *infra*.
13. § 6.2, *infra*.
14. Generally, see § 3, *supra*.